



March 1, 2006

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Federal Communications Commission
445 12th Street, SW
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RE: Response to Comments Regarding Auction 66

Commissioners and Staff:

My apologies at submitting comments after the February 28, 2006 deadline, but I was somewhat surprised by the intensity of Verizon's response in support of "package bidding." Below it is suggested that implementing package bidding will create some unwanted consequences, some already described and others perhaps yet to be discovered.

Although Verizon expressed support for "package bidding" at the regional license level, where large bidders are competing with large bidders, nevertheless packaged bidding is likely to create complexities and risks are likely to vastly outweigh the probably modest benefit. Further, the FCC as auctioneer may find package bidding in practice not to its liking in terms of round-by-round auction processes nor with respect to overall governance.

What is termed "packaged bidding" is better described as "bidder-defined, bidder-specific sales lot formulation." In effect, the FCC will have delegated an important aspect of sales lot definition to individual bidders. It also will have removed from losing package bidders the cost of unwinding unwanted licenses if the "package bid" fails, creating a moral hazard. Although I am sure that none of the advocates of "package bidding" intends such a result, the ability to create bidder-specific "sales lots" and the elimination of any cost in unwinding "package bid" positions facilitates some novel opportunities to corner a market.

At a minimum, bidders and perhaps the FCC staff as it interacts with bidders will be frustrated by the unfamiliar and perhaps very peculiar round-

by-round impacts of the intersection of packaged bidding and individual license bidding. Large companies competing with other large companies on the regional playing field may find this round-by-round complexity particularly daunting – for example, as might be the case if a bidder falls behind in bidding on a New England Regional license (or package of several licenses), because some bidder increased its bid on a Gulf of Mexico license and that bid increase rippled through several interlocking “packages.” The resulting confusion as to a given bidder’s current position between rounds could materially degrade the auction process and decrease effective liquidity as bidders try to determine whether or how to bid in the next round.

A more exciting and, I am sure, a wholly unintended potential consequence is that delegating “sales lot definition” to individual bidders and removing risk from package bidding may assist a bidder in “cornering” a market, whether deliberately or inadvertently.

Below is further description of both the more workaday negative consequences and a “perfect storm” scenario as to how package bidding could facilitate cornering all or part of an auction.

This note is not a suggestion that the FCC improve “package bidding” by adding rules and constraints, nor a reflection on those who see packaged bidding as solving a problem, which it does, but only by adding complexity and risk. The FCC as auctioneer is better served by a “less is more” auction simplicity rather than by adding features and functions. Indeed, the FCC should consider further simplification from today’s level of complexity rather than introducing more complexity.

Sincerely

Fulton Wilcox
Colts Neck Solutions LLC

Colts Neck Solutions LLC**Auction 66 – Response to Comments on “Packaged Bidding”**

The suggestion that package bidding be implemented specifically for the Auction 66 Regional Economic Area Grouping Licenses (REAG) finesses objections based on the concerns of small bidders. Nevertheless, Colts Neck Solution LLC still recommends that package bidding not be introduced, because there is insufficient benefit to offset the complexities and risks, even at the REAG level.

Risks involved in delegating “sales lot definition” to individual bidders

An essential characteristic of the proposed “package bidding” is that a bidder defines a bidder-specific “sales lot” – an orthogonal sales lot overlay to the geographic sales lots already defined by the FCC as auctioneer.

To clarify terminology, an Auction 66-listed license – e.g., one of the regional New England licenses - is an FCC-defined “sales lot” made up of a bundle of locales in New England and two paired sets of frequencies. One can bid on the entire “sales lot,” but cannot bid on, say, only northern New England or on only one of the two paired sets of frequencies even though physically the sales lot is divisible.

A bidder defined “package” has similar indivisible characteristics. Once a bidder defines such a package, other bidders are forced to compete with an indivisible “sum” in addition to familiar license-by-license competitions. Simultaneously competing by bidder-defined “package” definitions as well as geographic license definitions introduces “asymmetric” competition and bid evaluation problems.

For example, a bidder who creates a “package” made up of ten FCC-defined licenses merely enters a single number bid to bid on that package - e.g., \$25,000,000. Attributing that \$25,000,000 to individual licenses is essentially meaningless. The way other bidders typically can overbid the \$25,000,000 bid is for one or more bidders or to bid an enough for one or more of the ten licenses to sum to greater than \$25,000,000, or for some combination of non-congruent “packages” and individual license bids to exceed \$25,000,000. A bidder can also overbid on the package although the package itself may be coherent only to the bidder that originally designed it.

Bidders will be dependent on round-by-round feedback from the FCC’s results evaluation software, and they no longer can bidders focus only on the licenses (or packages) that they care about. The FCC’s bid evaluation

software will loop through thousands of combinations of individual and packaged bids, making sure not to include a given license or package twice in the same combination. It will sum the auctioneer's overall "take" from each unique combination. It will then compare those sums to find highest, and then from that winning combination it will back out the individual license bids and package bids that make up that highest sum. It will then have to reconstruct the detailed results of the last round and set the parameters for the next round. It is not clear that the round results will be meaningful at the license level for packaged bids, and more importantly even with round results in hand a bidder will have no assurance that its present bid or an increased bid will be competitive.

If, for example, the \$25,000,000 package bid referenced above is part of the winning combination, any individual bids on any of the ten licenses within that package end up being discarded, either permanently or, a somewhat confusing alternative, temporarily. That is, a bid of \$2,000,000 on one of the ten licenses might lose to the package in round 2, but even if unchanged emerge as the winner in round 3, because bidding elsewhere directly or indirectly defeated the package.

As illustrated, in the world of "asymmetric" competition, bringing one or more apparently dead bids back to life poses many practical issues. For example, if the bidder has in the meantime bid on other licenses, the bidder may be unpleasantly surprised to find that it had exceeded its budget. Perhaps the FCC will be surprised to learn that the bidder has exceeded its BU ceiling, because packaged bidding circumvents BU controls. It also may be that a bidder has to overbid its own license-level bid in hopes of leveraging asymmetric competition, only to learn that the earlier bid would have sufficed. There of course will be "free rider" opportunities in which one bidder's heroic attack on a package not only brings the hero's bids back to life, but someone else's as well.

If bidders create a substantial number of packages (either because they want to or in self-defense), doing round level "what if" projections may range from the difficult to the impossible. If the FCC as "auctioneer" tries to fill this gap by writing more detailed and sophisticated reports, it is likely to find itself in a downward spiral of evermore complex reporting. An auction that has attracted substantial liquidity may turn illiquid merely because bidders cannot figure out whether it is worth bidding on a given license or "package."

The package bidding "perfect storm" – cornering the auction

Below is a hypothetical case that illustrates the perhaps dangerous power of "packaged bidding." This hypothetical case involving a hypothetical bidder is

a “what-if” think-through and does not purport to represent the thought processes, motivations or interests of any party to FCC auctions. What it describes is how helpful “packaged bidding” could be to someone who wants to corner an entire auction or a significant subset.

Cornering an entire auction is akin to a category 5 “perfect storm.” A “perfect storm” is itself unlikely, but packaged bidding could set off smaller-scale, localized storms that are less obvious and more difficult to forestall.

For the perfect storm scenario, let us assume that the FCC in fact implements a “packaged bid”-enabled regional license geography (REAG) auction, separate from the rest of Auction 66. The FCC suggested consideration of such an option and Verizon supported that option in its comments.

Enter onto the scene a prospective bidder, the hypothetical entity being named Gould, Fiske and Company. This entity is a first-time bidder with no existing wireless infrastructure, but brings experience in other industries as well as deep pockets. This prospective bidder turns in a wholly acceptable Form 175 and other FCC Auction registration documents. It registers an interest in all of the regional licenses listed in the Auction 66 catalog, from the first license on the current Auction 66 REAG license list, REA001, New England, to the last, REA012, Gulf of Mexico, and every REAG license in between. If curious individuals inquire, the bidder can offer various evidences of capabilities to meet FCC build-out deadlines.

In the pre-auction enrollment process, the bidder defines its FCC Auction “package.” Its single package consists of all REAG licenses in the auction, again from REA001 to REA012. If Gould, Fiske and Company wins, it wins every license offered in the REAG auction. If it loses, it loses every license and incurs zero position unwinding costs.

To satisfy (and exploit) the somewhat peculiar FCC rules regarding “BUs,” the hypothetical bidder wires to the FCC an advance, refundable payment of \$571,300,000. That amount buys enough FCC bidding units (BUs) to support simultaneous bids on all REAG license properties in the Auction 66 catalog. Note that, under current FCC rules, having “bought” (or at least rented) these BU’s, Gould, Fiske and Company will be able to bid any amount – into the trillions of dollars – restrained only by the bidder’s business sense and ethics.

In Round One of the auction, the hypothetical bidder initiates the “perfect storm” by bidding on its package at one approved bid level higher than the minimum bid of \$571,300,000. Therefore, this package bid figure undoubtedly

sweeps the first round. In subsequent early rounds, the bidder may continue to bid above the minimum to be sure to keep the opposition in catch-up mode and to convey an impression that the “Golden Horde” is attacking. As bidders fall by the wayside or delay bidding until management can be consulted, jump bids become less necessary although probably still beneficial in forestalling other bidders’ countermeasures. Note that the FCC’s publication of a set of pre-approved jump bid levels permits nicely tuned indications of seriousness and bidding power.

A packaged bidder is indifferent to price at the individual license level. Unless the sum of competitor’s non-duplicative high bids across all license properties exceeds Gould, Fiske & Company’s across the board “package bid,” Gould & Company continues to win in a clean sweep. In contrast to other bidders, between rounds the Gould, Fiske and Company representative simply has to pick a next bid level from the FCC-supplied hierarchy and enter a single-number bid for its package. It will have no problem with activity rules and the “smoothed” next acceptable bid will probably help add confusion to the ranks of its opponents.

Collectively, the other bidders will have far greater financial resources than any one bidder, so in theory Gould, Fiske and Company cannot corner the market or can do so only at an enormously high price. However, other bidders’ collective bidding firepower will be dissipated in duplicative bids, internal debates about how to bid, irritation at “free riders,” etc.

Additionally, under today’s “BU” rules, bidders who have very deep pockets may nevertheless be hobbled by a shortfall in prepaid BUs and by the FCC rule forbidding the purchase of more BU’s after the close of pre-auction enrollment. Therefore, a bidder who prepaid for \$100,000,000 worth of BU’s is not equipped to take on the hypothetical Gould, Fiske & Company with its \$571,300,000 worth of BUs. Lack of BU’s hinders bidders from moving money “horizontally” (to properties on which the bidder has not yet bid) even though BU quantities have no effect “vertically” (someone with a comparatively few BUs can bid a trillion dollars on a single license). Further, current FCC rules provide a certain amount of “stealth” for Gould, Fiske and Company, because by the time the FCC releases its report on who bought how many BUs, the deadline for buying more BUs has passed.

Gould, Fiske & Company’s major prospect for winning at an affordable price comes from playing on the confusion of “asymmetric” competition long enough to have bidders drop out from frustration and confusion. As discouraged bidders drop out, the prospects of other bidders defeating the “corner” go down. Meanwhile, the ability of the hypothetical Gould, Fiske & Company to raise money goes up, because cornering the auction creates an artificial

product shortage and increases “street” prices. The screen play describing how this hypothetical “perfect storm” ends has not yet been completed.

Note the vital role played by “packaged bidding.” The ability of the bidder to define a package tailored to the bidder’s objectives created the opportunity to corner the entire auction, at no risk and very low cost to exit a failed “corner.”

In a non-packaged environment, an attempt to corner the overall market would be futile. Absent packaged bidding, each license is contested in a micro-auction, and within each discrete contest the only way to win is to bid higher than the opponents for that license. More importantly, the only way to lose is to bid less – a bidder cannot be blind-sided by lack of bidding on some other set of licenses.

Although a massive “corner the market” effort described above is very unlikely, it illustrates some of the characteristics of lesser risks.

For example, what happens if, for example, one bidder declares the three New England REAG licenses and the three Southeast REAG licenses to be a “package?” Will opposing bidders become discouraged and, in effect, allow the package bidder to dominate? Will an opposing bidder go head-to-head in bidding on the package and, if it wins, end up having to unwind positions in unwanted licenses – the very disease that packaged bidding intended to cure.

The FCC can of course begin refining its regulation “packages.” It can cap the number of licenses per package. If that leaves the risk that a bidder can create multiple interlocking packages, another rule can seek to prevent that from happening by allowing a bidder to create only n packages. More rules can be created to prevent packages from being too geographically concentrated, too this or too that. Each new wrinkle in the auction process creates confusion and risk.

In the end, the piling of rule on rule and enforcement feature on enforcement feature is likely to create cost and complexities that dwarf the benefit of solving a few bidders’ problems in unwinding unwanted positions.

Conclusion

FCC-instituted “package bidding” simply is not worth the effort and risk. Round-by-round, bidders will have to cope with the added complexity of coping with asymmetric competition. The FCC will have to take on greatly increased round results reporting to convey to bidders their current position and the implications for the next round. Further, as described above, one risk is that package bidding opens up low-cost opportunities to “corner” subsets of

it. This article is of course not advocating “cornering,” but merely highlighting possible unintended consequences of what has been defined as “package bidding.”

It is therefore recommended that what has been described as “packaged bidding” not be implemented. Further, it is recommended that the FCC consider other suggestions advanced in previous Colts Neck Solutions LLC comments, such as the elimination of “BUs” in favor of a simpler percent of maximum bid exposure bid deposit process.

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1. Replace the entire BU (Bidding Unit) scheme with a straight percentage upfront payment, if in fact it is worthwhile operating any upfront payment process.
2. Replace “smoothed,” dynamically generated minimum acceptable next bids per license with straight percentage increments for all licenses and rounds
3. Permit bidders to bid in any rounded amounts above the minimum.
4. “Tilt” reserve price computation to align with market preference for higher population density locales.
5. Rather than take on the complexities of packaged bidding, the FCC should perhaps provide somewhat easier bid withdrawal rules.
6. It is suggested that the FCC not constrain its level of information-distribution and indeed perhaps even increase it.
7. A question not asked by the FCC, but an important one, is whether the prospective bidders for Auction 66 have been provided with enough information regarding “encumbrances” to make the auction effective and efficient. The answer seems to be no.

Summary

From a prospective bidder’s viewpoint, each spectrum property in Auction 66 presents a unique “story” in terms of radio-frequency relevant geography, socio-economic conditions, competitive conditions, tower and other infrastructure availability, spectrum “encumbrances,” time value of money and others. As described above, the FCC can help bidders by simplifying the auction process and increasing the amount of pre-auction information on each license property’s “encumbrances.”

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